No. 13-20-00355-CV

Court of Appeals, Thirteenth District
Corpus Christi – Edinburg, Texas

Hidalgo County Water Improvement District No. 3
Appellant

vs.

Hidalgo County Irrigation District No. 1
Appellee

Appeal from the County Court at Law No. 4
Hidalgo County, Texas
Cause No. CCD-0517-D

BRIEF OF APPELLEE

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November 5, 2020

Oral Argument Conditionally Requested

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Statement of the Case

Nature of the case	Eminent domain suit where one governmental entity is attempting to acquire an interest in another governmental entity's land. C.R. at 114.
Course of proceedings	After the appointed special commissioners issued their award, the condemnee filed a plea to the jurisdiction asserting governmental immunity. C.R. at 47, 103. The condemnor filed a response. *Id.* at 131. In a non-evidentiary hearing, the trial court permitted the condemnee to file a reply and the condemnor to file a sur-reply. *See* 2 R.R. at 16. The parties filed their additional briefs accordingly. C.R. at 164, 174.
Disposition of the case	The trial court granted the condemnee's plea to the jurisdiction and dismissed the suit for lack of subject-matter jurisdiction. C.R. at 180. The condemnor appealed. *Id.* at 182.

Statement on Oral Argument

Condemnee Hidalgo County Irrigation District No. 1 respectfully submits that oral argument is not necessary in this appeal. Eminent domain suits are not exempt from governmental immunity, and the Legislature has not clearly and unambiguously waived District 1's immunity here. If, however, the Court requests oral argument, District 1 will attend and present argument.

Issues Presented

1. Did the trial court properly grant Condemnee Hidalgo County Irrigation District No. 1's Plea to the Jurisdiction?

A. District 1 is entitled to governmental immunity, and immunity applies to suits seeking to recover the government's land. This eminent domain suit seeks to appropriate District 1's land. Did the trial court correctly rule that governmental immunity applies to eminent domain suits? *See infra* Argument § I.

B. Governmental immunity protects a governmental entity from being sued unless the plaintiff shows that the Legislature clearly and unambiguously waived that entity's immunity. Texas Water Code Section 49.222 does not expressly state that immunity is waived and only empowers water districts to condemn "any land." Did the trial court correctly rule that Section 49.222 does not clearly and unambiguously waive immunity? *See infra* Argument § II.A–B.

C. Texas Property Code Section 21.012 also does not expressly waive immunity and instead requires a party with eminent domain authority to file a petition that "state[s] the name of the owner of the property if the owner is known." Did the trial court correctly rule that Section 21.012 does not clearly and unambiguously waive immunity? *See infra* Argument § II.A, C.

Record and Party References

Appellee Hidalgo County Irrigation District No. 1 files this Brief pursuant to Rule 38 of the Texas Rules of Appellate Procedure. Parties will be referred to as in the trial court or by name. References will be as follows:

Record	Reference
Clerk's Record	C.R. at {page}
Reporter's Record	{volume} R.R. at {page}
Appendices	App. Tab {letter}

Introduction

This appeal concerns whether governmental entities are immune from eminent domain suits that seek to acquire their land and, if so, whether the Legislature has clearly and unambiguously waived the condemnee's immunity here. No Texas appellate court has held that eminent domain suits are exempt from governmental immunity, and this Court should not become the first. The immunity doctrine aims to protect government property and funds and to prevent parties from using litigation to alter or control governmental policy. An eminent domain suit to acquire the government's land implicates these policy goals.

The Court should also hold that the condemnor failed to meet its burden to prove a clear and unambiguous statutory waiver of the condemnee's immunity here. Even if the condemnor has a general power to condemn public land, that is not enough to overcome immunity under the "clear and unambiguous" standard. Moreover, the Water Code does not give the condemnor clear and unambiguous power to condemn public land, and no statute cited by the condemnor clearly and unambiguously waives the condemnee's immunity. This Court should affirm the trial court's dismissal.

Statement of Facts

This appeal arises from an eminent domain suit seeking to acquire the government's land. That is, one governmental entity wants to take another governmental entity's land without the landowning entity's consent. The condemnee entity asserted governmental immunity to protect its land, and the trial court dismissed the case on this ground. This appeal presents questions involving governmental immunity's role in eminent domain proceedings and particularly under the Texas Water Code. Condemnee Hidalgo County Irrigation District No. 1 (District 1) files this brief requesting that this Court affirm the dismissal.

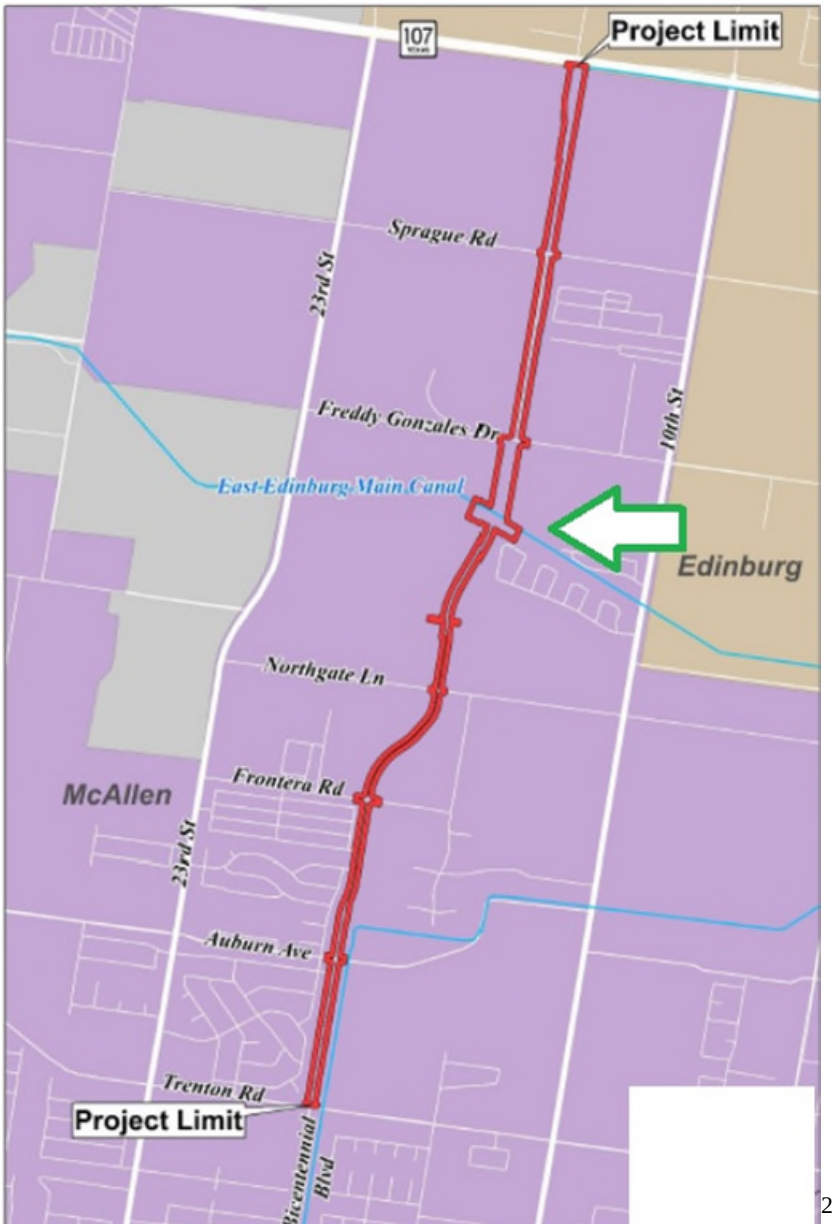
1. Condemnor Hidalgo County Water Improvement District No. 3 filed suit seeking to acquire an easement in Condemnee Hidalgo County Irrigation District No. 1's land.

District 1 has an open irrigation outtake canal just south of the intersection of Freddy Gonzalez Drive and Bicentennial Boulevard in McAllen, Texas. *See* C.R. at 88 (Dist. 1's Answer & Written Statement of Objs. – live pleading). For context, Bicentennial is a major, four-lane road running north and south in McAllen. Paola Cepeda, *McAllen Breaks Ground on Bicentennial Boulevard Extension Project*, Valley Central (Dec. 11, 2019, 7:21 p.m.) (referred to as "Cepeda, *McAllen Breaks Ground*"), https://www.valleycentral.com/news/local-news/mcallen-breaks-

ground-on-bicentennial-boulevard-extension-project/.[1] McAllen decided to extend Bicentennial a few miles to the north across District 1's canal near Freddy Gonzalez Drive, which runs east and west between McAllen and the neighboring City of Edinburg. *See id.*; C.R. at 88–89. In a news report, McAllen's city manager described this project as one that will have an "immediate impact to the traffic flow in the area [that] will allow for motorists to spend less time in traffic, but may also allow for further development and growth. It's a win-win for the entire McAllen community." Cepeda, *McAllen Breaks Ground*.

For reference, here is a map showing the Bicentennial extension project and a green and white arrow indicating where District 1's canal is:

[1] This source is not in the record and is offered to provide the Court context of the nature of the project.



[2]

Prior to McAllen extending Bicentennial, District 1 had its previously open canal at that location buried underground in two 72-inch reinforced concrete pressure pipes, which sit on a gravel bed. *See* C.R. at 88–89. The section that is

[2] This map is not in the record and is provided for the Court's reference.

buried is referred to as a "siphon," and it connects one side of the canal to the other on each side of the Bicentennial expansion. *See id.*; *see also* C.R. at 117.[3] The canal services and provides water to numerous District 1 customers from this intersection north to Highway 107 in Edinburg, then east along Highway 107, and continuing north of the University of Texas Rio Grande Valley's Edinburg campus. C.R. at 89. A majority of Edinburg's drinking water flows through District 1's canal. *Id.*[4]

For the Court's reference, here is a recent picture[5] of District 1's infrastructure, circled in red (the canal is open and the siphon is buried beneath Bicentennial, which has been paved), at the location of the attempted condemnation:

[3] The siphon is also described in Isael Posadas' affidavit (¶ 2) and in Exhibit 5 (¶ 4.2) attached to District 1's response to District 3's emergency motion for temporary relief filed in this Court.

[4] *See also* Posadas affid. (attached to Dist. 1's Resp. to Emer. Mot. for Temp. Relief filed in this Court).

[5] This photograph is not in the trial court record. District 1 offers it simply for context.

Condemnor Hidalgo County Water Improvement District No. 3 (District 3) wants to construct and maintain a pipeline that would cross District 1's canal precisely at the siphon. *See* C.R. at 89. District 1 contends that District 3's proposed pipeline will materially interfere with and practically destroy District 1's canal and operations. *See id.* at 90–91. In short, District 3 intends to dig and bore under District 1's siphon, which also requires a boring receiving station on the north side of District

1's canal. *See id.* That construction activity in such close proximity to District 1's infrastructure would destroy District 1's infrastructure and prevent service to District 1's customers. *See id.*

Unsurprisingly, District 1 and District 3 did not reach an agreement on District 3's destructive proposal to place its pipeline at the specific location of the siphon. To force its way onto District 1's property, District 3 filed an eminent domain suit seeking a subsurface easement for the pipeline. *See id.* at 6.

2. District 1 filed a plea to the jurisdiction based on governmental immunity, which the trial court granted.

The trial court appointed special commissioners who held a hearing and issued an award. *See* C.R. at 16, 24, 29, 47. District 1 then filed objections to the award and a plea to the jurisdiction on the basis of governmental immunity. *Id.* at 88, 103. District 1 argued that it was immune from eminent domain suits and that District 3 had failed to prove a clear and unambiguous legislative waiver of immunity for this suit. *Id.* at 103–05.

One business day before the hearing on the plea to the jurisdiction, District 3 filed a lengthy response in which it argued that immunity does not apply to eminent domain suits and that immunity also is waived in any event by Texas Water Code Section 49.222. *See id.* at 131–43 (filed on Friday, July 17, 2020); *see also* C.R. at 129 (setting hearing for Monday, July 20, 2020). District 3 included a footnote

claiming that Texas Property Code Section 21.012 also waived District 1's immunity. *See* C.R. at 139 n.41. Given the last-minute filing, the trial court allowed District 1 to file a reply and District 3 to file a sur-reply after a non-evidentiary hearing. *See* 2 R.R. at 16. District 1 and District 3 filed their briefs accordingly. C.R. at 164, 174.

After reviewing the parties' post-hearing briefing, the trial court granted District 1's plea to the jurisdiction and dismissed the suit for lack of subject-matter jurisdiction. *Id.* at 180. Consistent with the Texas Supreme Court's precedent, the trial court addressed the jurisdictional issue promptly and declined to grant District 3's request for possession upon finding it had no jurisdiction. *See* C.R. at 194; Ex. A-9 to Dist. 3's Emer. Mot. for Temp. Relief (filed in this Court) (trial court's email declining to grant any relief on District 3's request for possession); *In re Lazy W Dist. No. 1*, 493 S.W.3d 538, 539–45 (Tex. 2016) (orig. proceeding) (issuing mandamus allowing trial court to decide jurisdictional issue in eminent domain proceeding before awarding possession). As the Supreme Court has explained, any eminent domain proceedings conducted without jurisdiction would be void. *Id.* at 543–44; *see also* C.R. at 103 (District 1 citing *In re Lazy W* in its plea to the jurisdiction).[6]

[6] District 1 also provided this Court briefing on the issue of possession pending appeal in response to District 3's motion for temporary relief, which this Court properly denied.

3. District 3 makes several irrelevant factual allegations before this Court.

The only issues before this Court in this appeal concern whether eminent domain proceedings are categorically exempt from governmental immunity and whether immunity is waived for this particular suit under District 3's cited statutes. District 3 nonetheless has included some factual allegations that have nothing to do with that analysis. District 1 addresses them here briefly. In addition to being irrelevant to the jurisdictional inquiry at hand, most of these items involve "evidence" filed post-judgment or other documents outside the scope of review. *See Univ. of Tex. Sw. Med. Ctr. v. Taylor*, No. 05-17-01221-CV, 2018 Tex. App. LEXIS 5069, at *11 n.3, 2018 WL 3322939 (Tex. App.—Dallas July 6, 2018, pet. denied) (mem. op.) (explaining that the scope of review is limited to the items referenced in the plea to the jurisdiction and the responsive briefs).

In a lengthy footnote relying entirely on exhibits filed post-judgment, District 3 complains about District 1's alleged actions involving the City of McAllen. *See* Appellant's Br. at 3 n.4. District 3, District 1, and McAllen are litigating these allegations in another lawsuit, and those issues are not before this Court in this appeal.[7] District 1 denies any impropriety and reserves further argument for that

[7] *See Hidalgo Cnty. Irrig. Dist. No. 1 v. City of McAllen*, Cause No. C-0937-20-A, 92nd District Court, Hidalgo County, Texas. Docket available at: https://pa.co.hidalgo.tx.us/default.aspx. District 1 attached pleadings from this proceeding as Exhibits 5 and 6 to its response to District 3's emergency motion for temporary relief in this Court.

litigation. For the sake of this appeal, however, District 1 notes that District 3 does not have the right to pursue eminent domain against District 1 and that District 1 could not "circumvent" or "undermine" a right that District 3 does not have.

Again citing post-judgment exhibits, District 3 also complains about a supposed conversation between its engineer and District 1's engineer when District 3 was trying to acquire the easement voluntarily. *See* Appellant's Br. at 2. District 1 did not mislead District 3. As this Court has seen in the affidavits attached to District 1's response to District 3's emergency motion for temporary relief, District 3's proposal is unsafe and would practically destroy District 1's canal and siphon. Yara Corbitt, the chief executive officer of the utility contractor working for the City of McAllen (and indirectly for District 3 to install District 3's pipeline) on the Bicentennial expansion, testified by affidavit that District 3's proposal "would be risky and dangerous to [the contractor's] employees and to [District 1's] Pipes and Canal." Corbitt Affid. at 2 ¶ 6 (attached to Dist. 1's Resp. to Emer. Mot. for Temp. Relief filed in this Court). Isael Posadas, an engineer for District 1, similarly testified by affidavit that District 3's proposed boring receiving station's location "is in such close proximity to [District 1's] property that it will interfere with and practically destroy [District 1's] outtake pipe and canal on the north side of the Canal, which will prevent service to [District 1's] customers." Posadas Affid. at 2 ¶ 3 (attached to Dist. 1's Resp. to Emer. Mot. for Temp. Relief filed in this Court). Posadas further

testified by affidavit that the depth of District 3's proposed pipeline would disturb the gravel underlying District 1's pipes and thus destroy them. *See id.* ¶ 3. Posadas testified that he had been warning District 3 about this problem for months. *Id.* ¶ 4.

In any event, the record on the potential impact of District 3's alleged proposal has not been developed, and should not have been developed, since the trial court dismissed this case for want of jurisdiction. Indeed, the only issue before this Court is whether District 1 is immune from this suit in the first instance.

District 3 also cites post-judgment exhibits in describing what it intends to install, and the Court should disregard this statement for similar reasons. *See id.* at 1 n.3. District 1 maintains its position that District 3's proposed pipeline will materially interfere with and practically destroy District 1's canal and operations and that it is dangerous. *See* Corbitt & Posadas affids. attached to Dist. 1's Resp. to Emer. Mot. for Temp. Relief.

As for the alleged investment District 3 has made to construct the pipeline thus far, District 3 should have obtained the land or agreements regarding the land before making that investment. District 3 knowingly chose to risk its investment by proceeding to order pipe and hire lawyers and engineers *before* it had obtained all permits or ownership of the land to install its pipeline. *See* Exs. 5, 6 attached to Dist. 1's Resp. to Dist. 3's Emergency Mot. for Temp. Relief (filed in this Court). District 3's alleged investment is irrelevant to the immunity issue before the Court, and that

it may have wasted its money is not District 1's fault. Moreover, much of the road was installed before this appeal. *See* Corbitt Affid. at 2 ¶ 8 (attached to Dist. 1's Resp. to Emer. Mot. for Temp. Relief). If District 3 is allowed to undo that construction in the future, the costs of doing so will change very little. *See id.*

Summary of the Argument

The trial court properly dismissed this case for want of jurisdiction. District 1's governmental immunity applies to an eminent domain suit which seeks to take District 1's land. A fundamental purpose of immunity is to protect the government's property and funds and to prevent government policy from being controlled or altered. Texas has long recognized immunity's role in protecting government property in *in rem* actions, and *City of Conroe*'s limited holding, on which District 3 places much reliance, does nothing to change that law. This Court should not become the first Texas court to exempt eminent domain suits from immunity. *See infra* § I.

To overcome the immunity defense, District 3 *must* show that the Legislature *clearly and unambiguously* waived District 1's immunity. District 3 failed to meet this burden. The Court must strictly construe the cited statutes against District 3 under both eminent domain law and immunity law. Neither statute expressly waives any entity's immunity, and District 3's arguments are premised solely on supposed implications under the statutes. The Court should reject those arguments.

Water Code Section 49.222 concerns District 3's eminent domain powers and does not satisfy the waiver standard. A statute generally providing for condemnation of public land would not waive immunity, and Section 49.222 does not even use the phrase "public land." Moreover, Section 49.222's language and surrounding statutes

reflect the Legislature's decision not to grant District 3 the power to condemn public land. Property Code 21.012, which generally governs virtually all eminent domain proceedings, has nothing to do with immunity and fails for similar reasons. *See infra* § II.

District 1 is immune from this suit. With due deference to the Legislature and separation of powers, this Court should affirm the trial court's dismissal.

Standard of Review

To render a binding judgment, a court must have subject-matter jurisdiction over the controversy. *Spir Star AG v. Kimich*, 310 S.W.3d 868, 871 (Tex. 2010). A plea to the jurisdiction is a dilatory plea; its purpose is "to defeat a cause of action without regard to whether the claims have merit." *Wheelabrator Air Pollution Control, Inc. v. City of San Antonio*, 489 S.W.3d 448, 453 (Tex. 2016). A plea based on governmental immunity from suit, like District 1's plea here, challenges the trial court's subject-matter jurisdiction over a suit. *See Tex. Dep't of Crim. Just. v. Rangel*, 595 S.W.3d 198, 205 (Tex. 2020). Subject-matter jurisdiction is a question of law; therefore, appellate courts review the trial court's ruling on a plea to the jurisdiction de novo. *City of Conroe v. San Jacinto River Auth.*, 602 S.W.3d 444, 451, 457 (Tex. 2020).

When, as here, a plea to the jurisdiction challenges the pleadings, the appellate court determines if the plaintiff has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause. *Rangel*, 595 S.W.3d at 205. If the pleadings affirmatively negate the existence of jurisdiction, the plea to the jurisdiction may be granted without allowing the plaintiff an opportunity to amend. *Meyers v. JDC/Firethorne, Ltd.*, 548 S.W.3d 477, 486 (Tex. 2018).

Argument

I. Governmental immunity applies to eminent domain proceedings. {Response to District 3's § I.B.}

The Court should reject District 3's claim that the Texas Supreme Court categorically exempted all *in rem* actions from governmental immunity in *City of Conroe v. San Jacinto River Auth.*, 602 S.W.3d 444 (Tex. 2020). Texas law has long recognized governmental immunity's role in protecting government property from being taken via litigation. *See infra* § I.A. As a result, *in rem* suits have been subject to governmental immunity for decades, and *City of Conroe* did not change that law. Eminent domain suits are subject to governmental immunity, and they involve significant differences from the limited declaratory claim involved in *City of Conroe*. *See infra* § I.B. While the Texas Supreme Court has not specifically recognized immunity's application in the eminent domain context, no Texas court has held otherwise—and for good reason. The Court should join other courts of appeals in recognizing that immunity applies to eminent domain claims to protect government property. *See infra* § I.C.

A. Governmental immunity aims to protect government funds and property from litigation.

Governmental immunity is a common law doctrine that protects political subdivisions of the State, including irrigation districts like District 1. *See Engleman*

Irrigation Dist. v. Shields Bros., 519 S.W.3d 642, 643–44 (Tex. App.—Corpus Christi 2015), *aff'd*, 514 S.W.3d 746 (Tex. 2017).[8] Immunity from suit, which is at issue here, bars an action against the governmental entity unless immunity from suit has been expressly waived by the Legislature. *City of Dallas v. Albert*, 354 S.W.3d 368, 373 (Tex. 2011). The Legislature's waiver of immunity from suit must be in "clear and unambiguous language." *See* Tex. Gov't Code Ann. § 311.034 (App. Tab A); *see also infra* § II (discussing this standard further). When a governmental entity is immune from suit, the court lacks subject-matter jurisdiction. *Sampson v. Univ. of Tex. at Austin*, 500 S.W.3d 380, 384 (Tex. 2016). Immunity from suit is properly raised by a plea to the trial court's jurisdiction. *Id.* The plaintiff has the burden to establish the Legislature's consent, which may be alleged either by reference to a statute or express legislative permission. *Albert*, 354 S.W.3d at 373.

A fundamental purpose of governmental immunity is to protect the government's property and funds. *See Tooke v. City of Mexia*, 197 S.W.3d 325, 331–32 (Tex. 2006). As pertinent here, governmental immunity aims to prevent parties from seeking to alter or control governmental policy by taking the government's property. *See Hall v. McRaven*, 508 S.W.3d 232, 240 (Tex. 2017) (explaining that

[8] Sovereign immunity is a similar, but distinct common law concept that protects the State and its various divisions. *Engleman Irrigation Dist. v. Shields Bros.*, 514 S.W.3d 746, 747 n.1 (Tex. 2017). The two concepts have similar rules, and opinions sometimes use the two terms interchangeably. *See id.* The analysis should be the same under either doctrine in this appeal, and this brief refers to both doctrines as "governmental immunity" for ease of reference. *See id.*

permissible suits "do not seek to alter government policy but rather enforce existing policy"); *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009) (explaining that governmental immunity bars suits that "attempt to exert control over the state"); *Short v. W.T. Carter & Bro.*, 126 S.W.2d 953, 962 (Tex. 1939) (holding immunity barred attempt to restrain the Land Commissioner from entering certain mineral leases). The Texas Supreme Court reaffirmed this purpose just this year. *Nettles v. GTECH Corp.*, 603 S.W.3d 63, 76 (Tex. 2020) ("[I]mmunity preserves the separation of powers by preventing the judiciary from interfering with the policymaking responsibilities of other branches of government and seeking to control their choices regarding the use of public funds."). This Court also recently confirmed that governmental immunity is implicated when a suit would "attempt to exert control over the state." *City of San Benito v. Cameron Cnty. Drainage Dist. No. 3*, No. 13-19-00194-CV, 2020 Tex. App. LEXIS 7764, at *15, 2020 WL 6073263 (Tex. App.—Corpus Christi Sept. 24, 2020, no pet. h.) (mem. op.).

By seeking to take District 1's land, District 3's eminent domain suit plainly implicates these principles in the same way as if District 3 had sought to take District 1's funds or any other property. As discussed in the next subsection, Texas law has long recognized the government's interest in protecting its property from acquisition by litigation, regardless of whether the suit is *in rem* or not.

B. *In rem* proceedings seeking to take the government's property, such as eminent domain suits, are subject to immunity.

The Court should reject District 3's argument that *in rem* proceedings are now categorically exempt from governmental immunity in Texas. Texas law has held for decades that *in rem* proceedings are subject to immunity, particularly when the plaintiff seeks to recover the government's property. That is exactly what is happening here, and that fact distinguishes this case from *City of Conroe*'s limited holding.

Nearly 60 years ago, for example, the Texas Supreme Court recognized that when the government is named as a defendant in "a suit for land, without legislative consent, its plea to the jurisdiction of the court based on sovereign immunity should be sustained." *State v. Lain*, 349 S.W.2d 579, 582 (Tex. 1961). The Texas Supreme Court and this Court have reaffirmed this rule involving "suits for land" on many occasions including in recent years. *See, e.g.*, *Porretto v. Tex. Gen. Land Off.*, 448 S.W.3d 393, 400 & n.26–27 (Tex. 2014) (relying on *Lain*'s rule); *Tex. Parks & Wildlife Dep't v. Sawyer Tr.*, 354 S.W.3d 384, 388–89 (Tex. 2011) ("The rule remains as it was set out in *State v. Lain* . . . ."); *Cameron Cnty. v. Tompkins*, 422 S.W.3d 789, 797 (Tex. App.—Corpus Christi 2013, pet. denied) ("[S]uits to try the State's title to property are immunity-barred . . . ."); *Redburn v. Garrett*, No. 13-12-00215-CV, 2013 Tex. App. LEXIS 6005, at *19–21, 2013 WL 2149699 (Tex.

App.—Corpus Christi May 16, 2013, pet. denied) (mem. op.) (holding that a "suit for land" was "barred by immunity"); *Postert v. Calhoun Cnty.*, No. 13-09-00576-CV, 2011 Tex. App. LEXIS 8643, at *5, 2011 WL 5182692 (Tex. App.—Corpus Christi Oct. 27, 2011, pet. denied) (mem. op.) (same). As this Court has explained, courts look to the "real substance" to determine whether the plaintiff's suit presents a claim for the government's title. *Tompkins*, 422 S.W.3d at 797; *see also Sawyer Tr.*, 354 S.W.3d at 389 (explaining that suits are barred if they "in substance" seek the government's title). The *Lain* rule applies to claims seeking to recover an easement in government owned land. *See, e.g.*, *Triple BB, LLC v. Village of Briarcliff*, 566 S.W.3d 385, 396 (Tex. App.—Austin 2018, pet. denied) (holding that suit seeking prescriptive easement was barred by governmental immunity as a "suit for land").

Under *Lain*'s "suit for land" rule, trespass-to-try-title actions have repeatedly been held to implicate the government's immunity. *See, e.g.*, *Sawyer Tr.*, 354 S.W.3d at 389 ("If the Trust's suit against the Department is in substance a trespass to try title action, it is barred by sovereign immunity absent the Legislature's having waived its immunity."); *Tompkins*, 422 S.W.3d at 796 ("[W]ithout the State's consent, a trespass-to-try-title action against the State is barred by sovereign immunity even if it is brought as a declaratory-judgment action under the

Declaratory Judgments Act.").[9] Even governmental claims to foreclose a tax lien on property owned by another governmental entity have been held to be subject to immunity under this rule. *See, e.g.*, *Montgomery Cnty. v. Veterans Land Bd.*, 342 S.W.3d 219, 221–26 (Tex. App.—Beaumont 2011, no pet.) (rejecting argument that *in rem* proceedings are exempt from immunity). Along those lines, the government can be immune from eminent domain proceedings under federal law. *See, e.g.*, *Sabine Pipe Line, LLC v. A Permanent Easement of 4.25 +/- Acres of Land in Orange Cnty.*, 327 F.R.D. 131, 138–45 (E.D. Tex. 2017) (granting Texas Parks & Wildlife Department's motion to dismiss eminent domain suit due to immunity).

These rulings are, of course, consistent with immunity's policy goal of protecting government property—whether that "*res*" is money, land, or something else. Eminent domain may sound *in rem*, but it still seeks to appropriate someone else's (in this case District 1's) property. *Reeves v. City of Dallas*, 195 S.W.2d 575, 581 (Tex. Civ. App.—Dallas 1946, writ ref'd n.r.e.) ("A condemnation proceeding[]

[9] The fact that trespass-to-try-title claims have been described as *quasi in rem* makes no difference to the immunity analysis. *See, e.g.*, *Buchanan v. Girvin*, 176 S.W.2d 729, 730 (Tex. 1943). Despite the minor technical differences between *quasi in rem* and *in rem* actions, "[t]he effect of a judgment in both cases, though, is limited to the property that supports jurisdiction and does not impose personal liability on the property owner." *Bodine v. Webb*, 992 S.W.2d 672, 676 (Tex. App.—Austin 1999, pet. denied). District 3 and *City of Conroe* both rely on this quote from *Bodine*'s discussion of *in rem* and *quasi in rem*. *See* Appellant's Br. at 5–6; 602 S.W.3d 444, 457–58 (Tex. 2020). The fact that trespass-to-try-title implicates immunity shows that judgments based on the government's property supposedly without the threat of personal liability are still subject to immunity.

is a proceeding[] in rem; it is not a taking of rights of persons in the ordinary sense, but *an appropriation of physical properties*." (emphasis added)).

There is no reason to treat eminent domain any differently from trespass to try title, tax lien foreclosure, or any other suit to recover the government's property. It is "in substance" a suit to appropriate the government's land. *See Sawyer Tr.*, 354 S.W.3d at 389; *Redburn v. Garrett*, No. 13-12-00215-CV, 2013 Tex. App. LEXIS 6005, at *19–21, 2013 WL 2149699 (Tex. App.—Corpus Christi May 16, 2013, pet. denied) (mem. op.) ("The 'real substance' of appellant's claims involves a suit for land. . . . Thus, appellant's claims against the City are barred by immunity."). That is exactly what District 3 seeks to recover here. *See* C.R. at 119 (Pl.'s 1st Am. Pet. – live pleading) (praying for a judgment vesting title in District 3).

The Texas Supreme Court has not yet ruled on whether governmental immunity applies in eminent domain proceedings. On two separate occasions, that Court declined to address the issue and left it for another day. *See In re Lazy W. Dist. No. 1*, 493 S.W.3d 538, 544 (Tex. 2016) (orig. proceeding) ("We have never decided whether a governmental entity is immune from suit to condemn its property, and we need not do so today."); *Oncor Elec. Delivery Co. v. Dall. Area Rapid Transit*, 369 S.W.3d 845, 849 (Tex. 2012) (similar).

The Dallas Court of Appeals, however, addressed the question in *Oncor* and held that governmental immunity applies to eminent domain cases. *Dall. Area Rapid*

Transit v. Oncor Elec. Delivery Co., 331 S.W.3d 91, 97–100 (Tex. App.—Dallas 2010), *rev'd on other grounds*, 369 S.W.3d 845 (Tex. 2012). Relying on Texas's history of recognizing immunity from suits where parties seek to take the government's property, the Dallas Court of Appeals rejected an argument that all *in rem* cases are exempt from immunity. *See id.* at 98–99. The court of appeals ultimately held that the Legislature had not clearly and unambiguously waived immunity and thus the trial court had properly dismissed the case for want of jurisdiction. *See id.* at 100–07.

The Legislature evidently agreed that it had not provided a clear and unambiguous waiver in *Oncor*. While *Oncor* was pending in the Texas Supreme Court, the Legislature enacted a statute clearly waiving immunity. *See* 369 S.W.3d at 848–49. The Texas Supreme Court also acknowledged that the statute that existed at the time of the court of appeals and trial court proceedings presented a "difficult question" on waiver. *See id.* at 849–50. Assuming without deciding that immunity applied to eminent domain, the Supreme Court held that the new statute clearly and unambiguously waived immunity. *See id.* at 849–51. The Dallas Court of Appeals' ruling that immunity applies to eminent domain suits was not reversed and has not been overruled. *See id.* at 847–51. The specifics of the statutory analysis in *Oncor* are discussed in Section II below.

At least two other courts of appeals have addressed immunity defenses in the eminent domain context, and neither one of them even questioned whether immunity would apply if not waived by the Legislature. *See Burlington N. & Santa Fe Ry. Co. v. City of Houston*, 171 S.W.3d 240, 245–46 (Tex. App.—Houston [14th Dist.] 2005, no pet.) (holding that condemnee city's immunity was waived); *State v. Montgomery Cnty.*, 262 S.W.3d 439, 442–43 (Tex. App.—Beaumont 2008, no pet.) (similar); *infra* § II.B.2 (discussing these cases' waiver analysis further).

Contrary to District 3's characterization, the Texas Supreme Court's *City of Conroe* opinion did not address immunity's role in the eminent domain context, nor did it reject or otherwise overrule the Dallas Court of Appeals' opinion in *Oncor*. *See City of Conroe v. San Jacinto River Auth.*, 602 S.W.3d 444 (Tex. 2020). Indeed, *City of Conroe* did not involve eminent domain at all. *See id.* District 3 focuses on a single line of the *City of Conroe* opinion—that "because EDJA [Expedited Declaratory Judgment Act] suits concern only *in rem* rights, immunity does not apply"—without examining Texas law in the area of immunity in *in rem* suits or the rest of the *City of Conroe* opinion. *See id.* at 457. *City of Conroe* never said that *in rem* suits are now categorically exempt from governmental immunity. Instead, the Supreme Court wrote at length about how the limited nature of the *in rem* rights involved in that EDJA case did not implicate governmental immunity. *See id.* at

457–58. It is in the context of that analysis that this Court should read *City of Conroe*'s statements about *in rem* actions. *See id.*

City of Conroe's immunity analysis is stated in light of that opinion's earlier determinations about the limited focus of EDJA causes of action. *See id.* at 451–57. The EDJA "permits issuers of bonds and other public securities to resolve certain disputes regarding their securities as to all interested parties on an expedited basis." *Id.* at 447; *see also* Tex. Gov't Code Ann. Ch. 1205. As construed in *City of Conroe*, the EDJA permits only declaratory judgments as to the validity of a contract concerning the issuance of bonds, not whether the contract was breached or complied with. *See* 602 S.W.3d at 451–57 (dismissing claims related to breach and compliance with the contracts). The EDJA claims involved in *City of Conroe* are thus a far cry from seeking a judgment, as District 3 does here, that would deprive District 1 of its land. *See id.*

In analyzing immunity's application to the EDJA, the Supreme Court focused on the fact that the entities claiming immunity could not possibly suffer a judgment other than a declaration that the contracts they had entered with the bond issuer were valid. *See id.* at 457–58. Rather than categorically exempting *in rem* actions from immunity, the Court emphasized, "[O]ur construction of the EDJA's permissible scope limits any concern that *in rem* declarations will be used to circumvent immunity. Issuers cannot seek declarations under the EDJA to adjudicate a claim for

breach of contract or to declare their own compliance with a contract." *Id.* at 458. Unlike District 1, the entities claiming immunity from the EDJA did not stand to lose property or funds as a part of the judgment. *See id.*

Importantly, the Supreme Court also stressed that the entities claiming immunity from the EDJA were not required to participate in the EDJA proceedings and had intervened voluntarily. *See id.* at 457–58. Here, District 3 named District 1 as a defendant, and District 1 was under the threat of losing its land if District 1 did not hire lawyers to participate in the litigation. Moreover, District 3 has never conceded that District 1 will be able to recover its damages (direct and consequential) for any harm that may come to District 1's infrastructure or customers as a result of damage that District 3's proposed pipeline will cause to District 1's pipeline. District 3 has similarly never conceded that it will not itself raise an immunity defense to District 1's damage claim.

City of Conroe says nothing at all about eminent domain or the long lines of authority using immunity to protect government property from suit. Likewise, *City of Conroe* also does not address the Dallas Court of Appeals' reasoning in *Oncor* on immunity's place in the eminent domain context, much less overrule it. The factors addressed by the Dallas Court of Appeals in *Oncor*—particularly the fact that the defendant could lose land as a result of the suit—were not present or addressed in *City of Conroe*.

This Court should join the other courts of appeals and hold that governmental immunity applies to eminent domain suits because eminent domain is in substance a suit for land. Nothing in *City of Conroe* changes Texas law on this front.

C. No Texas appellate court has held that eminent domain cases are exempt from governmental immunity.

Just to be clear, District 3 cites no case that has accepted District 3's argument that eminent domain should be categorically exempt from governmental immunity regardless of whether the Legislature waives immunity or not. District 1 is not aware of any case that adopts District 3's view on this issue. As mentioned, two courts of appeals (the Houston 14th Court in *Burlington*[10] and the Beaumont Court in *Montgomery County*[11]) found Legislative waiver and did not even question whether immunity applies. And the Dallas Court of Appeals directly held that immunity applies unless waived in *Oncor*. 331 S.W.3d 91, 97–100 (Tex. App.—Dallas 2010), *rev'd on other grounds*, 369 S.W.3d 845 (Tex. 2012); *see supra* § I.B (discussing these cases). If this Court accepts District 3's argument, it would be the first Texas appellate court to reach that conclusion.

Governmental immunity in the eminent domain context fits the strong policies favoring governmental immunity generally. Again, a fundamental purpose of

[10] *See* 171 S.W.3d 240, 245–46 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

[11] *See* 262 S.W.3d 439, 442–43 (Tex. App.—Beaumont 2008, no pet.).

immunity law is to protect government property and to protect government policy from being altered or controlled. *See supra* § I.A.

The Court should reject District 3's suggestion that governmental immunity in this area would somehow be "random" or "fortuitous." Quite the contrary, immunity's application would be subject to the deliberate policy decisions of the Legislature, just as it is in every other context. *See Lubbock Cnty. Water Control & Improvement Dist. v. Church & Akin, L.L.C.*, 442 S.W.3d 297, 300–01 (Tex. 2014) (discussing judiciary's deference to Legislature on issues of immunity waiver). The Court should also disregard District 3's complaint that ownership of District 1's property would be subject to District 1's "whims" (imagine that). A purpose of governmental immunity is to protect the government's ability to control its own property, even from suits by other governmental entities. *See, e.g.*, *Montgomery Cnty. v. Veterans Land Bd.*, 342 S.W.3d 219, 221–26 (Tex. App.—Beaumont 2011, no pet.).

The Court also should reject District 3's reliance on the paramount purpose doctrine, which a condemnee can invoke to prevent condemnation in some circumstances when the land in question is already subject to another public use. *See Canyon Reg'l Water Auth. v. Guadalupe-Blanco River Auth.*, 258 S.W.3d 613, 616–17 (Tex. 2008) (describing doctrine); *see also* C.R. at 89–91 (District 1 pleading paramount purpose argument). The paramount purpose doctrine is irrelevant to the

immunity inquiry because it does not apply if the condemnor lacks power to condemn the property in question. *See DFW Int'l Airport Bd. v. City of Irving*, 854 S.W.2d 161, 174–75 (Tex. App.—Dallas 1993), *rev'd on other grounds*, 868 S.W.2d 750 (Tex. 1993) (per curiam). Only if immunity is waived and a court has jurisdiction over the eminent domain suit is the paramount purpose doctrine used to determine whether condemnation is allowed on the merits. *See id.* Further, as the court of appeals noted in *Oncor*, the *Canyon Regional* case cited by District 3 did not address immunity since no one raised it. *See* 331 S.W.3d 91, 99–100 (Tex. App.—Dallas 2010) (rejecting similar argument based on paramount purpose doctrine), *rev'd on other grounds*, 369 S.W.3d 845 (Tex. 2012). It is also possible that immunity was waived, either by statute or voluntarily, in that case or others involving paramount purpose.

Because eminent domain suits implicate fundamental concerns of governmental immunity, the Court should hold that governmental immunity applies here unless District 3 proved that the Legislature clearly and unambiguously waived it. The trial court thus did not err by deciding that governmental immunity applies to eminent domain suits.

II. The Legislature has not clearly and unambiguously waived District 1's immunity for this suit. {Response to District 3's § I.C}

The trial court correctly ruled that District 3 failed to prove that the Legislature has clearly and unambiguously waived District 1's immunity. As a result, this Court should affirm the trial court's judgment.

District 3 had to overcome the "clear and unambiguous" test to show a waiver of immunity and also faced presumptions that read eminent domain statutes strictly in favor of the landowner. *See infra* § II.A. Water Code Section 49.222 does not clearly and unambiguously waive District 1's immunity. Mere power to condemn public land is not sufficient to satisfy the "clear and unambiguous" test, and in any event, Section 49.222 does not empower District 3 to take public land. *See infra* § II.B. Property Code Section 21.012 also does not clearly and unambiguously waive District 1's immunity for similar reasons. *See infra* § II.C.

A. District 3 had the burden to plead and prove a clear and unambiguous legislative waiver of District 1's immunity.

As mentioned above, District 3 had the burden to plead and prove that the Legislature has clearly and unambiguously waived District 1's governmental immunity to this suit. *See supra* § I.A. The "clear and unambiguous" test protects the separation of powers so that the complex policy decision of whether to waive immunity is left to the Legislature. *See Lubbock Cnty. Water Control &*

Improvement Dist. v. Church & Akin, L.L.C., 442 S.W.3d 297, 300–01 (Tex. 2014). Courts defer to the Legislature because the waiver decision requires numerous policy considerations to determine whether the government should risk its funds and property in litigation. *See id.* To satisfy this standard, the statute must waive the government's immunity beyond doubt. *Id.* "The Legislature itself has demanded such clarity." *Id.* (citing Tex. Gov't Code Ann. § 311.034 (App. Tab A) ("In order to preserve the legislature's interest in managing state fiscal matters through the appropriations process, a statute shall not be construed as a waiver of sovereign immunity unless the waiver is effectuated by clear and unambiguous language.")).

In developing this doctrine, the Supreme Court has "endeavored to avoid across-the-board rulings abrogating immunity." *City of Galveston v. State*, 217 S.W.3d 466, 470 (Tex. 2007). As a result, cursory language will not satisfy the "clear and unambiguous" standard. *Univ. of Tex. at El Paso v. Herrera*, 322 S.W.3d 192, 201 (Tex. 2010) ("This cursory language does not remotely constitute voluntary consent to suit, much less 'clear and unambiguous' consent."); *see also, e.g., Tooke v. City of Mexia*, 197 S.W.3d 325, 328–43 (Tex. 2006) (holding that phrases like "sue or be sued" do not by themselves show clear and unambiguous waiver). While this strict standard may produce harsh results from the perspective of a plaintiff, the Supreme Court has emphasized that that some degree of unfairness is inherent to the immunity doctrine. *Univ. of the Incarnate Word v. Redus*, 602 S.W.3d 398, 410–11

(Tex. 2020) ("[J]ust as immunity is inherent to sovereignty, unfairness is inherent to immunity.").

In this case, District 3 must overcome two unfavorable presumptions to sue District 1. First, given the "clear and unambiguous" standard governing immunity waiver, any uncertainty or ambiguity in the statute must be resolved in favor of retaining immunity. *Rolling Plains Groundwater Conservation Dist. v. City of Aspermont*, 353 S.W.3d 756, 759 (Tex. 2011) (per curiam). Second, the legislative grant of eminent domain power is strictly construed, and doubts are resolved in favor of the landowner (here, District 1). *Tex. Rice Land Partners, Ltd. v. Denbury Green Pipeline-Tex., LLC*, 363 S.W.3d 192, 198 (Tex. 2012).

District 3 relies on Water Code Section 49.222 and Property Code Section 21.012 as the bases for waiver. Neither of these statutes is sufficient. District 1 addresses Section 49.222 first.

B. Water Code Section 49.222 does not clearly and unambiguously waive District 1's immunity.

District 3 primarily relies on Water Code Section 49.222, which is titled "Eminent Domain" and provides:

> (a) A district or water supply corporation may acquire by condemnation any land, easements, or other property inside or outside the district boundaries, or the boundaries of the certificated service area for a water supply corporation, necessary for water, sanitary sewer, storm drainage, or flood drainage or control purposes or for any other of its projects or

> purposes, and may elect to condemn either the fee simple title or a lesser property interest.
>
> (b) The right of eminent domain shall be exercised in the manner provided in Chapter 21, Property Code, except that a district or a water supply corporation shall not be required to give bond for appeal or bond for costs in any condemnation suit or other suit to which it is a party and shall not be required to deposit more than the amount of any award in any suit.
>
> (c) The power of eminent domain may not be used for the condemnation of land for the purpose of acquiring rights to underground water or of water or water rights.

App. Tab B.

In essence, District 3 contends that it has the power to condemn "any land" and thus has the power to condemn District 1's land. *See* Tex. Water Code Ann. § 49.222(a) (App. Tab B). The Court should reject Section 49.222 as a basis for immunity waiver for at least three reasons.

First, the Texas Supreme Court recently has stated that merely having the power to condemn "public land" would not be sufficient to clearly and unambiguously waive the immunity of every governmental entity in Texas. Section 49.222 does not even include the phrase "public land." *See infra* § II.B.1. *Second*, in any event, Section 49.222's use of "any land" does not clearly and unambiguously include the power to condemn public land. *See infra* § II.B.2. *Third*, by maintaining immunity, Section 49.222 is consistent with other sections of the Water Code and does not render any provision meaningless. *See infra* § II.B.3.

1. Merely having the power to condemn public land does not constitute a clear and unambiguous waiver of governmental immunity.

At the outset, the Court should reject District 3's assumption that mere power to condemn public land is sufficient to waive immunity. In effect, District 3 is arguing that its supposed power to condemn public land overrides the immunity of *every* governmental entity in Texas without any limitation. The Legislature did not clearly and unambiguously provide such broad authority. Regardless of whether Section 49.222 empowers District 3 to condemn public land (and it does not, *see infra* § II.B.2), it does not constitute a clear and unambiguous waiver of immunity.

District 3 fails to address the analysis from the Texas Supreme Court in *Oncor*. *See supra* § I.B (discussing *Oncor* in the context of whether immunity applies to eminent domain suits). In *Oncor*, the Supreme Court warned that a general provision that a condemnor "can condemn public land might be construed merely to recognize a power that cannot be exercised without a specific waiver of immunity, just as a statute authorizing a governmental entity to 'be sued' does not waive immunity for all suits." *Oncor Elec. Delivery Co. v. Dall. Area Rapid Transit*, 369 S.W.3d. 845, 850 (Tex. 2012) (citing *Tooke v. City of Mexia*, 197 S.W.3d 325, 342 (Tex. 2006)). The statute at issue in the Supreme Court in *Oncor* (Tex. Util. Code Ann. § 37.053(d)) passed muster only because it was "very specific" and was limited to

"certain 'public land' in certain circumstances." *Id.* In particular, that statute limited the eminent domain authority to:

- only electric corporations (not gas corporations, which were also subject to the statutory scheme in question);
- only some land ("public land, except land owned by the state"); and
- only with the prior approval of the Public Utilities Commission ("on which the commission has approved the construction of the line").

Id. at 848, 850.

The statute at issue here (Tex. Water Code Ann. § 49.222 (App. Tab B)) does not satisfy the "clear and unambiguous" standard described in the Supreme Court's *Oncor* decision. Section 49.222 does not even say "public land," much less include the kinds of specific limitations required to constitute a clear and unambiguous waiver under *Oncor*. Instead Section 49.222 just states "any land." "Any land"—even if that includes public land—is simply not specific enough to clearly and unambiguously waive the immunity of *every* governmental entity in Texas. *See id.* at 850.

The Texas Supreme Court's reluctance to find a clear and unambiguous waiver of immunity in a statute generally authorizing condemnation of "public land" is well founded in its precedent. The Court actively seeks to avoid finding across-the-board waivers, particularly based on a supposed implication of cursory language. *City of Galveston v. State*, 217 S.W.3d 466, 470 (Tex. 2007). This aversion underlies much of the Supreme Court's *Tooke* decision, which held that phrases like "sue or

be sued" are not enough in themselves to constitute clear and unambiguous waivers of immunity. *See Tooke v. City of Mexia*, 197 S.W.3d 325, 342 (Tex. 2006). After all, "sue or be sued" and similar phrases could mean any number of things that have nothing to do with immunity. *See id.* The ability to acquire "public land" runs into similar problems, which is why the Supreme Court cited *Tooke* for its warning about "public land" in *Oncor*. *See* 369 S.W.3d at 850. As the Supreme Court explained elsewhere, "a statute that contemplates a government entity's involvement in litigation does not 'clearly and unambiguously waive' the entity's immunity from suit." *Kirby Lake Dev., Ltd. v. Clear Lake City Water Auth.*, 320 S.W.3d 829, 837 (Tex. 2010). "Since *Tooke*, we have consistently refused to find waivers of immunity implicit in statutory language . . . ." *Id.* at 838.

Section 49.222 is even more vague than the kind of statute that the Supreme Court warned about in *Oncor*. Rather than a "general provision that [water districts] can condemn public land," Section 49.222 is a general provision permitting water districts to condemn "any land." *See Oncor Elec. Delivery Co.*, 369 S.W.3d at 850. To find immunity, this Court would have to hold (1) that "any land" impliedly includes public land and (2) that "any land" impliedly waives the immunity of every government entity. Assuming *arguendo* "any land" can be stretched to include public land, Section 49.222 still only at most envisions the condemnation of public land "*when* suit is permitted, not that immunity is waived" for every governmental

entity in the State in all water district eminent domain actions. *See Tooke v. City of Mexia*, 197 S.W.3d 325, 344 (Tex. 2006) ("All [a statute permitting a City to 'be sued'] *clearly* says is that the City can be sued and impleaded in court *when* suit is permitted, not that immunity is waived for all suits.").

The Court should hold that Section 49.222's general "any land" language does not meet the standard set forth in the Supreme Court's *Oncor* opinion and thus does not constitute a clear and unambiguous waiver. Texas law and the Legislature require more. As a result, the trial court correctly ruled that Section 49.222 does not waive District 1's immunity, regardless of whether that statute permits the condemnation of public land.

2. In any event, Section 49.222's use of "any land" does not clearly and unambiguously include public land.

Further, Section 49.222 does not even clearly and unambiguously empower District 3 to condemn public land. Again, District 3 must overcome two different presumptions against finding (1) waiver of immunity and (2) eminent domain power. The Court must read the statute strictly. *See supra* § II.A.

Even before the Supreme Court's pronouncement in *Oncor*, Texas appellate courts had demonstrated that they are disinclined to find a power to condemn public land without an express mandate to do so, particularly when analyzing the statute under governmental immunity law. For example, the court of appeals in *Oncor* held

that a statute empowering Oncor to condemn the "land . . . of any person" to be insufficiently clear. *See Dall. Area Rapid Transit v. Oncor Elec. Delivery Co.*, 331 S.W.3d 91, 100–06 (Tex. App.—Dallas 2010), *rev'd on other grounds*, 369 S.W.3d 845 (Tex. 2012); *see also supra* § I.B (explaining that the court of appeals in *Oncor* faced a different statute (Tex. Util. Code Ann. § 181.004) than the Supreme Court did (the newly enacted Tex. Util. Code Ann. § 37.053(d))). Likewise, the Austin Court of Appeals has held that the mere ability to condemn "real property" is not sufficient to grant the power to condemn public land. *See Sierra Club v. Austin ISD*, 489 S.W.2d 325, 333–34 (Tex. Civ. App.—Austin 1972) (contrasting statute in question with statutes that expressly grant authority to condemn "public land"), *rev'd on other grounds*, 495 S.W.2d 878 (Tex. 1973). Section 49.222 similarly does not contain an express authorization to condemn "public land" and instead uses the phrase "any land."

Water Code Chapter 49 shows that the Legislature deliberately chose not to use the phrase "public land" when describing the water districts' eminent domain power. When the Legislature described the water districts' power to voluntarily acquire land, it used the phrase "all land, both private and public." Tex. Water Code Ann. § 49.218(c) (App. Tab B). In fact, it used the phrases "private or public" or

"private and public" at least five times in Chapter 49.[12] The Legislature used the same phrases throughout the Water Code at least seven more times outside of Chapter 49.[13] Yet, when the Legislature described the water districts' power to acquire land by eminent domain, it used the phrase "any land." *See* Tex. Water Code Ann. § 49.222(a) (App. Tab B).

When the Legislature uses different language in different parts of a statutory scheme, courts presume that the Legislature intended different meanings. *Ineos USA, LLC v. Elmgren*, 505 S.W.3d 555, 564 (Tex. 2016). The Court should apply that presumption here and hold that Section 49.222 does not clearly and unambiguously empower District 3 to condemn public land. *See id.*

This is no different than if the statute empowered District 3 to condemn the "land . . . of any person or corporation" as the statute did in the court of appeals opinion in *Oncor*. *See Dall. Area Rapid Transit v. Oncor Elec. Delivery Co.*, 331 S.W.3d 91, 100–06 (Tex. App.—Dallas 2010), *rev'd on other grounds*, 369 S.W.3d 845 (Tex. 2012).[14] The *Oncor* court of appeals construed "any person" strictly to maintain governmental immunity. *See* 331 S.W.3d at 100–06. Applying the same

[12] *See* Tex. Water Code Ann. §§ 49.213, .218(c), .221(b), .227, .229 (App. Tab B).

[13] *See* Tex. Water Code Ann. §§ 26.014, 26.503(e), 27.071, 28.051, 29.034, 31.016, 32.151.

[14] The Code Construction Act defines "person" to include governmental entities. *See* Tex. Gov't Code Ann. § 311.005(2).

strict review, the Court should reach the same result here and should not construe "land" to mean public land. The Court should not treat "any land" differently than "any person" for immunity purposes. *See id.*

As District 3's own authorities state, the word "any" is a flexible term that depends on the context in which it is used. *See Branham v. Minear*, 199 S.W.2d 841, 845–46 (Tex. Civ. App.—Eastland 1947, writ ref'd n.r.e.); *Tex. Co. v. Schriewer*, 38 S.W.2d 141, 144 (Tex. Civ. App.—Waco 1931), *rev'd in part sub nom. Smith v. Tex. Co.*, 53 S.W.2d 774 (Tex. Comm'n App. 1932, holding approved). Here, given the context of how the Legislature employs "any land" (as in Section 49.222) and "all land, both private and public" (as in Section 49.218), and given the requirement that this court strictly construe statutes in favor of immunity, this Court should find that "any land" refers only to land that is generally not immune from suit—i.e., private land.

Section 49.222 is thus distinct from the statutes at issue in *State v. Montgomery County* and the Supreme Court's opinion in *Oncor*, which both expressly granted the power to condemn "public land." *See Oncor Elec. Delivery Co. v. Dall. Area Rapid Transit*, 369 S.W.3d. 845, 848 (Tex. 2012) (involving statute that permitted condemnation of "all public land, except land owned by the state, on which the [Public Utilities Commission] has approved the construction of the line"); *State v. Montgomery Cnty.*, 262 S.W.3d 439, 442–43 (Tex. App.—Beaumont 2008,

no pet.) (involving statute permitting condemnation of "public or private land, but not to land used for cemetery purposes"). *Montgomery County* also was decided without the benefit of the Supreme Court's decision in *Oncor* and is thus erroneous to the extent it suggests that mere power to condemn public land is sufficient to constitute a clear and unambiguous waiver of immunity. *See supra* § II.B.1 (discussing *Oncor* on this point).

Section 49.222 also is distinct from the *Burlington* case District 3 cites. Contrary to District 3's characterization, *Burlington* did not involve "substantially similar facts" to the present case for several reasons.

First, *Burlington* did not find waiver of governmental immunity under the condemnor's statutory authority to condemn "any real estate." *Burlington N. & Santa Fe Ry. Co. v. City of Houston*, 171 S.W.3d 240, 245–46 (Tex. App.—Houston [14th Dist.] 2005, no pet.). Instead, *Burlington* found waiver under a statute authorizing the condemnee to "plead and be impleaded in any court." *Id.*

Second, that holding demonstrates that *Burlington*'s analysis was predicated on a fundamentally erroneous understanding of Texas immunity law. *See id.* No party appealed *Burlington*, but the very next year, the Texas Supreme Court held that "plead or be impleaded" does not by itself clearly and unambiguously waive immunity. *See Tooke v. City of Mexia*, 197 S.W.3d 325, 342–43 (Tex. 2006); *Montgomery Cnty.*, 262 S.W.3d at 442 n.4 (noting this fact); *supra* § II.B.1

(discussing *Tooke*). This means *Burlington* was also issued without the benefit of the Supreme Court's opinion in *Oncor*. *See Oncor Elec. Delivery Co. v. Dall. Area Rapid Transit*, 369 S.W.3d. 845, 850 (Tex. 2012); *supra* § II.B.1 (discussing *Oncor*).

Third, the key issue in *Burlington* was whether federal law preempted the condemnee's arguments against condemnation, which is not at issue here. *See Burlington N. & Santa Fe Ry. Co.*, 171 S.W.3d at 246–50 (holding that federal law preempted any state law objection to condemnation).

Fourth, when *Burlington* mentioned the phrase "any real estate" in the eminent domain statute as implicitly authorizing condemnation of public land, it considered that statute in combination with several other statutes that gave the condemnor rights in government owned land. *See id.* at 249–50 (citing Articles 6316, 6317, and 6336 of the Revised Civil Statutes). Those statutes, for example, permitted the condemnor to "construct and operate a railroad between any points within this State" and the right to use any material on the government's land to construct and operate its railroad through or over that land. *See* Tex. Rev. Civ. Stat. Ann. arts. 6316, 6317 (repealed 2007) (App. Tab D). No similar statutes exist here. Moreover, unlike this case, *Burlington*'s statutes did not present the problem where the Legislature used different phrases to describe the land subject to the voluntary acquisition power and the land subject to the eminent domain power.. *See* 171 S.W.3d at 249–50. Also, *Burlington*'s statement indicating that "any real estate"

includes public lands was dictum, since the court ultimately relied on federal preemption and not the statute that included that phrase. *See id.*; *see also Seger v. Yorkshire Ins. Co.*, 503 S.W.3d 388, 399 (Tex. 2016) (discussing dictum and explaining that it is not binding).

The Court also should reject District 3's invitation to read language into the statute to overcome District 1's immunity. If the Court is unwilling to find that District 3 expressly has the power to condemn public land, District 3 suggests that the mere grant of eminent domain power is sufficient in itself to both condemn public land and waive immunity for all governmental entities. This suggestion would turn both immunity law and eminent domain law on their heads. The presumptions are against waiver and against eminent domain, not the other way around. *See supra* § II.A. The *Enbridge* and *Humble* cases District 3 cites for this argument concern different statutes and also did not involve questions of immunity. *See Fort Worth & W.R.R. Co. v. Enbridge*, 298 S.W.3d 392, 394–401 (Tex. App.—Fort Worth 2009, no pet.); *Humble Pipe Line Co. v. State*, 2 S.W.2d 1018, 1018–23 (Tex. Civ. App.—Austin 1928, writ ref'd); *see also Dall. Area Rapid Transit v. Oncor Elec. Delivery Co.*, 331 S.W.3d 91, 100–102 (Tex. App.—Dallas 2010), *rev'd on other grounds*, 369 S.W.3d 845 (Tex. 2012) (rejecting *Enbridge*'s and *Humble Pipe Line*'s application to immunity analysis under similar circumstances). Both of those cases involved statutes similar to the one at issue in the court of appeals in *Oncor*, and the

Legislature ultimately added a new statute to clearly address the immunity issue, as discussed previously. *See supra* §§ I.B, II.B.1.

The Court should similarly reject District 3's arguments that it should be entitled to take public land without express statutory authorization merely because it wants to control the route of its proposed pipeline. The Legislature, not District 3, gets to decide when governmental immunity is waived, what control District 3 has over its infrastructure, and what power District 3 has to take land from other governmental entities. The paramount purpose test and District 3's discretion to control the route of its projects are irrelevant because District 3 lacks the power to condemn District 1's land in the first place. *See DFW Int'l Airport Bd. v. City of Irving*, 854 S.W.2d 161, 174–75 (Tex. App.—Dallas 1993), *rev'd on other grounds*, 868 S.W.2d 750 (Tex. 1993) (per curiam).

The phrase "any land," as used in Section 49.222, simply does not clearly and unambiguously extend District 3's eminent domain power to public land. Nor is that phrase sufficient to waive every governmental entities' immunity, including District 1's. Texas law demands more specificity, and the Court should affirm the trial court's ruling that District 1's governmental immunity is not waived by Section 49.222.

3. Reading Section 49.222 to maintain immunity is consistent with other provisions of the Water Code and does not render any provision meaningless.

Contrary to District 3's suggestions, District 1's proposed reading of Section 49.222 is consistent with other provisions in Water Code Chapter 49 and does not render any provisions meaningless.

Section 49.223, for example, would not be affected. Section 49.223 requires water districts to pay the costs of relocating certain property. It provides:

> (a) In the event that the district or the water supply corporation, in the exercise of the power of eminent domain or power of relocation or any other power, makes necessary the relocation, raising, lowering, rerouting, or change in grade of or alteration in construction of any road, bridge, highway, railroad, electric transmission line, telegraph, or telephone properties, facilities, or pipelines, all necessary relocations, raising, lowering, rerouting, or change in grade or alteration of construction shall be done at the sole expense of the district or the water supply corporation unless otherwise agreed to in writing. Such relocation shall be accomplished in a timely manner so that the project of the district or the water supply corporation is not delayed.
>
> (b) "Sole expense" means the actual cost of the relocation, raising, lowering, rerouting, or change in grade or alteration of construction and providing comparable replacement without enhancing the facilities after deducting from it the net salvage value derived from the old facility.

Tex. Water Code Ann. § 49.223 (App. Tab B).

Section 49.223 is not affected by District 1's proposed interpretation of Section 49.222 for at least two reasons.

First, Section 49.223 imposes a duty to reimburse relocation costs, and that duty is not limited to relocations that result from the exercise of eminent domain. Instead, Section 49.233 imposes this cost on any relocation made necessary as a result of "the exercise of the power of eminent domain or power of relocation or *any other power*." *Id.* § 49.223(a) (App. Tab B) (emphasis added). The Supreme Court has confirmed that even entering a voluntary contract can trigger this statutory provision. *See, e.g.*, *Sw. Bell Tel., L.P. v. Emmett*, 459 S.W.3d 578, 587 (Tex. 2015) (holding that water district was responsible for relocation costs when it entered interlocal agreement to demolish bridges with privately owned electric facilities). Thus, Section 49.223 would still be effective irrespective of whether District 3 had the power to condemn all public land.

Second, the property items eligible for reimbursement under Section 49.223 are not described as public and are clearly not limited to public properties. In *Emmett*, for example, the water district was required to reimburse a private company for relocation of its facilities. *See id.* As a result, Section 49.223 would still be effective as to privately owned properties and properties for which the governmental owner has waived immunity. *See Dall. Area Rapid Transit v. Oncor Elec. Delivery Co.*, 331 S.W.3d 91, 104 (Tex. App.—Dallas 2010), *rev'd on other grounds*, 369 S.W.3d 845 (Tex. 2012) (rejecting condemnor's argument based on supposed meaningless of other statutory provisions when they could still be effective as to

private properties). "The Water Code applies to private individuals and governmental entities alike, so the Code is not without meaning when construed against an asserted waiver of immunity." *Rolling Plains Groundwater Conservation Dist. v. City of Aspermont*, 353 S.W.3d 756, 759 (Tex. 2011) (per curiam). At the very least, Section 49.223 does not clearly and unambiguously extend eminent domain power to the property owned by any governmental entity in Texas and waive immunity for all of those entities. *See id.*

The statute providing the right to enter land for investigations and testing (Section 49.221) also would remain meaningful. That statute provides:

> (a) The directors, engineers, attorneys, agents, operators, and employees of a district or water supply corporation may go on any land to inspect, make surveys, or perform tests to determine the condition, value, and usability of the property, with reference to the proposed location of works, improvements, plants, facilities, equipment, or appliances. The cost of restoration shall be borne by the district or the water supply corporation.
>
> (b) District employees and agents are entitled to enter any public or private property within the boundaries of the district or adjacent to any reservoir or other property owned by the district at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the district. District employees or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.

Tex. Water Code Ann. § 49.221 (App. Tab B).

In fact, Section 49.221 makes more sense in light of District 1's proposed distinction between "any land" and "any public or private property." Section 49.221 uses the terms "any land" and "any public or private property" for two different rights of entry. In subsection (a), the Legislature chose "any land" to describe what properties districts may enter essentially to determine whether the district should use the property for future facilities. *See* Tex. Water Code Ann. § 49.221(a) (App. Tab B). This usage of "any land" is consistent with Section 49.222's limitations on districts' eminent domain power. If a district wanted to acquire property that it could not obtain by eminent domain, it could presumably still enter that property by the same means that it could acquire it: with the landowner's voluntary consent. There is no need for a statutory power to enter land if the landowner consents to the entry. This power exists to aid the district when it is considering land for eminent domain.

In subsection (b), however, the Legislature decided to use "any public or private property" to describe the land which districts may enter for inspecting and investigating the conditions of the water quality pursuant to water quality regulations. *See id.* § 49.221(b) (App. Tab B). It makes sense that the Legislature would provide an expanded power to investigate water quality and compliance with safety regulations than to explore potential sites for land acquisition. There is less reason to wait for voluntary compliance from a governmental landowner with a request to enter property for safety purposes than there is with a request to enter

property for acquisition purposes. Section 49.221 reflects this difference and reinforces District 1's interpretation of District 3's eminent domain power.

It is the Legislature's prerogative to make these policy decisions, and the Court should presume that the Legislature intended different meanings for different language. *See Ineos USA, LLC v. Elmgren*, 505 S.W.3d 555, 564 (Tex. 2016). District 3 has failed to show that any statute would be rendered meaningless by construing Section 49.222 to maintain District 1's immunity.

The trial court rightly ruled that Section 49.222 does not clearly and unambiguously waive District 1's immunity, and this Court should affirm that ruling.

C. Property Code Section 21.012 does not clearly and unambiguously waive District 1's immunity.

District 3 proffers Property Code Section 21.012 as its only other basis for a clear and unequivocal waiver of District 1's immunity. District 3 offers little analysis of this statute and in fact only cited it in footnotes in the trial court. *See* C.R. at 116 n.1; C.R. at 139 n.41. District 1 is not aware of any court that has ever adopted District 3's position on this front, and District 3 cites none.

According to District 3, Section 21.012 clearly and unambiguously waives District 1's immunity because it allegedly makes District 1 a necessary party. In pertinent part, Section 21.012(b)(1) requires an eminent domain petition to "state the

name of the owner if the owner is known." Yet, Section 21.012 applies only if the purported condemnor has the necessary eminent domain authority. *See* Tex. Prop. Code Ann. § 21.012(a) (App. Tab C) (permitting only entities "with eminent domain authority" to file a petition). At the outset then, the Court should reject Section 21.012 as a basis for a clear and unambiguous waiver of immunity because District 3 does not have authority to condemn District 1's property. *See supra* § II.B; *see also Dall. Area Rapid Transit v. Oncor Elec. Delivery Co.*, 331 S.W.3d 91, 105 (Tex. App.—Dallas 2010), *rev'd on other grounds*, 369 S.W.3d 845 (Tex. 2012) (rejecting similar argument for the same reason).

Additionally, assuming *arguendo* an "owner" is a necessary party under Section 21.012, an "owner" is no different than a "person" was in the statute the *Oncor* court of appeals held was too vague to support a finding of clear and unambiguous waiver. *See* 331 S.W.3d at 100–06; *supra* § II.B.2 (discussing *Oncor* further). At most, it is no more than a recognition that the property owner will be involved in the suit, not that every governmental entity in Texas's immunity is waived. *See Tooke v. City of Mexia*, 197 S.W.3d 325, 344 (Tex. 2006).

District 3 is, in effect, asking the Court to recognize an even broader waiver of immunity than it would under District 3's interpretation of Water Code Section 49.222. Rather than waiving immunity for every governmental entity in every eminent domain suit brought by a water district, District 3 is effectively asking the

Court to recognize a waiver for every governmental entity in *any* type of eminent domain proceeding under Property Code Chapter 21. The Court should not read such a broad waiver into the word "owner" as used in Section 21.012. *See id.* Further, since the express ability to generally condemn public land is not sufficient to waive immunity, there is no way that Section 21.012's vague language is enough. *See supra* § II.B.1 (discussing the Supreme Court's warning in *Oncor*).

Additionally, District 3 cites *Taylor* as its sole basis for arguing that District 1's alleged status as a necessary party constitutes a clear and unambiguous waiver of District 1's immunity. *See Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 697–98 (Tex. 2003). Yet, *Taylor* merely listed "whether the statute requires the State to be joined in litigation" as one of several "factors" or "aids to help guide [the court's] analysis" when analyzing statutes that do not contain "'magic words,' such as the State's 'sovereign immunity to suit and liability is waived.'" *Id.* at 697–98, 701. The Supreme Court did not find this rule applicable to the statute at issue in *Taylor*. *See id.* at 701. Assuming *arguendo* District 1 is a necessary party to this eminent domain suit, that fact is not conclusive on the immunity waiver analysis. *See id.* at 697–98, 701; *Dall. Area Rapid Transit v. Oncor Elec. Delivery Co.*, 331 S.W.3d 91, 104 (Tex. App.—Dallas 2010) ("[T]he factors set out by the supreme court in *Taylor* are not conclusive, but rather are 'aids to help guide our analysis' in

determining whether the legislature has 'clearly and unambiguously' waived immunity."), *rev'd on other grounds*, 369 S.W.3d 845 (Tex. 2012).

When the Supreme Court has relied on that factor, it has done so in cases where the statute expressly says that a particular governmental entity may be named as a party to a statutory cause of action. In *Leeper*, for example, the Supreme Court relied on the fact that the Declaratory Judgments Act "expressly provides that persons may challenge ordinances or statutes, and that governmental entities must be joined or notified." *Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994). That statute specifically says that if the proceeding "involves the validity of a municipal ordinance or franchise, the *municipality must be made a party*" and "if the statute, ordinance, or franchise is alleged to be unconstitutional, the *attorney general of the state* must also be served with a copy of the proceeding and is entitled to be heard." Tex. Civ. Prac. & Rem. Code Ann. § 37.006(b) (emphasis added). *Fernandez* similarly involved a statute that required employers to be a defendant for anti-retaliation suits and specifically stated that individual state agencies shall be considered employers for the purposes of the act. *See Kerrville State Hosp. v. Fernandez*, 28 S.W.3d 1, 4–8 (Tex. 2000).

Section 21.012 does not contain similar language specifically stating that government entities are required to be sued under the statute. As a result, the *Taylor*

factor in question does not apply to Section 21.012, and the Court should reject this argument.

Moreover, the mere fact that District 1 is an owner of the property in question should have no different effect in the eminent domain context than it would in the trespass to try title or tax lien foreclosure contexts, both of which are statutory suits to which governmental entities are immune. *See supra* § I.B.

Assuming *arguendo* Section 21.012 requires District 1 to be a party, that does not constitute a clear and unambiguous waiver of District 1's or any other governmental entity's immunity. *See City of Galveston v. State*, 217 S.W.3d 466, 470 (Tex. 2007) (explaining that courts strive not to find across-the-board waivers based on cursory language). The trial court properly ruled that Section 21.012 does not clearly and unambiguously waive District 1's governmental immunity, and this Court should affirm that ruling.

III. Conclusion: The trial court properly granted District 1's plea to the jurisdiction, and this Court should affirm.

District 1 is entitled to governmental immunity in this eminent domain suit, which seeks to take District 1's land. Moreover, District 3 has failed to show that the Legislature has clearly and unambiguously waived District 1's immunity. As a result, the trial court was right to dismiss this suit, and this Court should affirm that dismissal.

Prayer

For these reasons, District 1 respectfully requests that the Court affirm the trial court's judgment. District 1 further requests all other and further relief it is entitled to receive.

Respectfully submitted,

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Certificate of Rule 9.4(i) Compliance

In compliance with Texas Rule of Appellate Procedure 9.4(i)(3), I certify that the number of words in this Brief of Appellee, excluding those matters listed in Rule 9.4(i)(1), is 12,322 words per the word processing program used for its preparation (Microsoft Word). Words contained in images were counted manually and included.

/s/ J. Joseph Vale
J. Joseph Vale

Certificate of Service

I certify that the foregoing document was electronically filed with the Clerk of the Court using the electronic case filing system of the Court. I also certify that a true and correct copy of the foregoing was served on the following counsel of record on November 5, 2020, as follows:

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/s/ J. Joseph Vale
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Appendices

Tab	Document
A	Tex. Gov't Code Ann. § 311.034
B	Selected Texas Water Code Sections
C	Tex. Prop. Code Ann. § 21.012
D	Repealed Revised Civil Statutes cited in *Burlington*

TAB A OF THE APPENDIX

Tex. Gov't Code § 311.034

This document is current through the most recent legislation which is the 2019 Regular Session, 86th Legislature, and the 2019 election results.

Sec. 311.034. Waiver of Sovereign Immunity.

In order to preserve the legislature's interest in managing state fiscal matters through the appropriations process, a statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language. In a statute, the use of "person," as defined by Section 311.005 to include governmental entities, does not indicate legislative intent to waive sovereign immunity unless the context of the statute indicates no other reasonable construction. Statutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity.

History

Enacted by Acts 2001, 77th Leg., ch. 1158 (H.B. 2914), § 8, effective June 15, 2001; am. Acts 2005, 79th Leg., ch. 1150 (H.B. 2988), § 1, effective September 1, 2005.

TAB B OF THE APPENDIX

Tex. Water Code § 49.218

This document is current through the most recent legislation which is the 2019 Regular Session, 86th Legislature, and the 2019 election results.

Sec. 49.218. Acquisition of Property.

(a) A district or water supply corporation may acquire an interest in land, materials, waste grounds, easements, rights-of-way, equipment, contract or permit rights or interests, including a certificate of convenience and necessity, contractual rights to use capacity in facilities and to acquire facilities and other property, real or personal, considered necessary for the purpose of accomplishing any one or more of the district's or water supply corporation's purposes provided in this code or in any other law. A district may utilize proceeds from the sale and issuance of its bonds, notes, or other obligations to acquire the items authorized by this section.

(b) A district or water supply corporation shall have the right to acquire property by gift, grant, or purchase, and the right to acquire property shall include property considered necessary for the construction, improvement, extension, enlargement, operation, or maintenance of the plants, works, improvements, facilities, equipment, or appliances of a district or a water supply corporation.

(c) A district or water supply corporation may acquire either the fee simple title to or an easement on all land, both public and private, either inside or outside its boundaries and may acquire the title to or an easement on property other than land held in fee.

(d) A district or water supply corporation may require, as a condition for service, that an applicant for service grant to the district or water supply corporation a permanent recorded easement that:

(1) is dedicated to the district or water supply corporation; and

(2) will provide a reasonable right of access and use to allow the district or water supply corporation to construct, install, maintain, replace, upgrade, inspect, or test any facility necessary to serve that applicant as well as the district's or water supply corporation's purposes in providing system-wide service.

(e) A district or water supply corporation may not, under Subsection (d), require an applicant to provide an easement for a service line for the sole benefit of another applicant.

(f) As a condition of service to a new subdivision, a district or water supply corporation may require a developer to provide permanent recorded easements to and throughout the subdivision sufficient to construct, install, maintain, replace, upgrade, inspect, or test any facility necessary to serve the subdivision's anticipated service demands when the subdivision is fully occupied.

(g) A district or water supply corporation may also lease property from others for its use on such terms and conditions as the board of the district or the board of directors of the water supply corporation may determine to be advantageous.

(h) Property acquired under this section, or any other law allowing the acquisition of property by a district or water supply corporation, and owned by a district or water supply corporation is not subject to assessments, charges, fees, or dues imposed by a nonprofit corporation under Chapter 204, Property Code.

History

Enacted by Acts 1995, 74th Leg., ch. 715 (S.B. 626), § 2, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 1070 (S.B. 1865), § 13, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 71 (H.B. 924), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1423 (S.B. 1444), § 13, effective June 17, 2001; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 18.009, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 962 (H.B. 1644), § 7, effective June 18, 2005.

End of Document

Tex. Water Code § 49.221

This document is current through the most recent legislation which is the 2019 Regular Session, 86th Legislature, and the 2019 election results.

Texas Statutes & Codes Annotated by LexisNexis® > Water Code > Title 4 General Law Districts (Chs. 49 — 68) > Chapter 49 Provisions Applicable to All Districts (Subchs. A — O) > Subchapter H Powers and Duties (§§ 49.211 — 49.270)

Sec. 49.221. Right to Enter Land.

(a) The directors, engineers, attorneys, agents, operators, and employees of a district or water supply corporation may go on any land to inspect, make surveys, or perform tests to determine the condition, value, and usability of the property, with reference to the proposed location of works, improvements, plants, facilities, equipment, or appliances. The cost of restoration shall be borne by the district or the water supply corporation.

(b) District employees and agents are entitled to enter any public or private property within the boundaries of the district or adjacent to any reservoir or other property owned by the district at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the district. District employees or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.

History

Enacted by Acts 1995, 74th Leg., ch. 715 (S.B. 626), § 2, effective September 1, 1995.

End of Document

Tex. Water Code § 49.222

This document is current through the most recent legislation which is the 2019 Regular Session, 86th Legislature, and the 2019 election results.

Sec. 49.222. Eminent Domain.

(a) A district or water supply corporation may acquire by condemnation any land, easements, or other property inside or outside the district boundaries, or the boundaries of the certificated service area for a water supply corporation, necessary for water, sanitary sewer, storm drainage, or flood drainage or control purposes or for any other of its projects or purposes, and may elect to condemn either the fee simple title or a lesser property interest.

(b) The right of eminent domain shall be exercised in the manner provided in Chapter 21, Property Code, except that a district or a water supply corporation shall not be required to give bond for appeal or bond for costs in any condemnation suit or other suit to which it is a party and shall not be required to deposit more than the amount of any award in any suit.

(c) The power of eminent domain may not be used for the condemnation of land for the purpose of acquiring rights to underground water or of water or water rights.

History

Enacted by Acts 1995, 74th Leg., ch. 715 (S.B. 626), § 2, effective September 1, 1995.

Tex. Water Code § 49.223

This document is current through the most recent legislation which is the 2019 Regular Session, 86th Legislature, and the 2019 election results.

Texas Statutes & Codes Annotated by LexisNexis® > Water Code > Title 4 General Law Districts (Chs. 49 — 68) > Chapter 49 Provisions Applicable to All Districts (Subchs. A — O) > Subchapter H Powers and Duties (§§ 49.211 — 49.270)

Sec. 49.223. Costs of Relocation of Property.

(a) In the event that the district or the water supply corporation, in the exercise of the power of eminent domain or power of relocation or any other power, makes necessary the relocation, raising, lowering, rerouting, or change in grade of or alteration in construction of any road, bridge, highway, railroad, electric transmission line, telegraph, or telephone properties, facilities, or pipelines, all necessary relocations, raising, lowering, rerouting, or change in grade or alteration of construction shall be done at the sole expense of the district or the water supply corporation unless otherwise agreed to in writing. Such relocation shall be accomplished in a timely manner so that the project of the district or the water supply corporation is not delayed.

(b) "Sole expense" means the actual cost of the relocation, raising, lowering, rerouting, or change in grade or alteration of construction and providing comparable replacement without enhancing the facilities after deducting from it the net salvage value derived from the old facility.

History

Enacted by Acts 1995, 74th Leg., ch. 715 (S.B. 626), § 2, effective September 1, 1995.

End of Document

TAB C OF THE APPENDIX

Tex. Prop. Code § 21.012

This document is current through the most recent legislation which is the 2019 Regular Session, 86th Legislature, and the 2019 election results.

Sec. 21.012. Condemnation Petition.

(a) If an entity with eminent domain authority wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, the entity may begin a condemnation proceeding by filing a petition in the proper court.

(b) The petition must:

(1) describe the property to be condemned;

(2) state with specificity the public use for which the entity intends to acquire the property;

(3) state the name of the owner of the property if the owner is known;

(4) state that the entity and the property owner are unable to agree on the damages;

(5) if applicable, state that the entity provided the property owner with the landowner's bill of rights statement in accordance with Section 21.0112; and

(6) state that the entity made a bona fide offer to acquire the property from the property owner voluntarily as provided by Section 21.0113.

(c) An entity that files a petition under this section must provide a copy of the petition to the property owner by certified mail, return receipt requested.

History

Enacted by Acts 1983, 68th Leg., ch. 576 (S.B. 748), § 1, effective January 1, 1984; am. Acts 2007, 80th Leg., ch. 1201 (H.B. 1495), § 4, effective February 1, 2008; am. Acts 2011, 82nd Leg., ch. 81 (S.B. 18), § 9, effective September 1, 2011.

End of Document

TAB D OF THE APPENDIX

2005 Tex. Rev. Civ. Stat. art. 6316

2005 Texas Code Archive

TEXAS STATUTES AND CODES ANNOTATED BY LEXISNEXIS(R) > CIVIL STATUTES > TITLE 112--RAILROADS > CHAPTER SIX--RIGHT OF WAY

Art 6316. [6481] [4422] [4166] Right to construct

Any railroad corporation shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States.

TEXAS STATUTES AND CODES ANNOTATED BY LEXISNEXIS(R)

End of Document

2005 Tex. Rev. Civ. Stat. art. 6317

2005 Texas Code Archive

TEXAS STATUTES AND CODES ANNOTATED BY LEXISNEXIS(R) > CIVIL STATUTES > TITLE 112--RAILROADS > CHAPTER SIX--RIGHT OF WAY

Art 6317. [6482] [4423] [4167] Right of way over public lands

Every such corporation shall have the right of way for its line of road through and over any lands belonging to this State, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land.

TEXAS STATUTES AND CODES ANNOTATED BY LEXISNEXIS(R)

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